

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Elliott Tatum And Lashaunta Tatum

Case No. 08-81032

Chapter 13

Social Security No. xxx-xx-8588 and xxx-xx-5282

Address: 6140 St. Andrews Drive, Sanford, NC 27332-

Debtors

MOTION TO MODIFY PLAN

NOW COME the Debtors, by and through counsel undersigned, who move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtors show unto this Court the following:

1. This case was filed on July 17, 2008, with the Chapter 13 plan being subsequently confirmed on October 28, 2008.
2. The Debtors propose to modify the Chapter 13 plan in this case in the following respects:

From: \$2,283.00 per month.

To: \$2,283.00 per month through June 2011, followed thereafter by \$1,922.00 per month, starting in August 2011.
3. In addition, the Debtors request a "waiver" to move their Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. As a condition of receiving these waivers the Debtors agree that, should any subsequent payments be more than thirty (30) days delinquent within the twelve (12) months following the entry of this Order, that the Debtors' case may be dismissed without further hearing by the Court. The Debtors agree that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
 - a. The Female Debtor has lost her job and is not receiving unemployment.
 - b. The Debtors currently have no child care expenses.
5. An Amended Schedule I for the Debtors is attached hereto and is incorporated hereto by reference.

6. An Amended Schedule J for the Debtors is attached hereto and is incorporated by reference.
7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as detailed on the attached Chapter 13 Worksheet:
 - a. Change in length of plan.
 - b. Filed claims different from schedules.
 - c. Loss of disposable income.
 - d. Change in monthly disbursement to Santander to \$89.00.
 - e. Change in monthly disbursement to National Auto Finance to \$260.00.

Appended Application for an Additional Attorney Fee

8. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.
9. Additionally, pursuant to Bankruptcy Rule 2016(a), attorney for the Debtors seeks reimbursement in the amount of \$63.00 for the costs of service of this Motion on creditors.

WHEREFORE, the Debtors pray that this Court grant their Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$313.00 to compensate undersigned for the services and costs rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: July 15, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward C. Boltz

Edward C. Boltz

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

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CERTIFICATE OF SERVICE

I, Dawn DeFrange, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on July 15, 2011, I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee
Michael West
U.S. Bankruptcy Administrator

Elliott Tatum And Lashaunta Tatum
6140 St. Andrews Drive,
Sanford, NC 27332-

All creditors listed on the attached Mailing Matrix at the addresses listed thereon.

/s Dawn DeFrange
Dawn DeFrange

In re

Elliott DeCarlos Tatum
LaShaunta McLamb Tatum

Debtor(s)

Case No. 08-81032

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): Daughter Son	AGE(S): 4 6
Employment:	DEBTOR	SPOUSE
Occupation	QA Specialist	Unemployed
Name of Employer	Novartis	
How long employed	19 months	
Address of Employer	475 Green Oaks Parkway Holly Springs, NC 27540	

INCOME: (Estimate of average or projected monthly income at time case filed)		DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)		\$ 5,399.50	\$ 0.00
2. Estimate monthly overtime		\$ 0.00	\$ 0.00
3. SUBTOTAL		\$ 5,399.50	\$ 0.00
4. LESS PAYROLL DEDUCTIONS			
a. Payroll taxes and social security		\$ 1,061.78	\$ 0.00
b. Insurance		\$ 703.15	\$ 0.00
c. Union dues		\$ 0.00	\$ 0.00
d. Other (Specify): 401(k) Deduction		\$ 250.36	\$ 0.00
		\$ 0.00	\$ 0.00
5. SUBTOTAL OF PAYROLL DEDUCTIONS		\$ 2,015.29	\$ 0.00
6. TOTAL NET MONTHLY TAKE HOME PAY		\$ 3,384.21	\$ 0.00
7. Regular income from operation of business or profession or farm (Attach detailed statement)		\$ 0.00	\$ 0.00
8. Income from real property		\$ 0.00	\$ 0.00
9. Interest and dividends		\$ 0.00	\$ 0.00
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above		\$ 0.00	\$ 0.00
11. Social security or government assistance (Specify):		\$ 0.00	\$ 0.00
		\$ 0.00	\$ 0.00
12. Pension or retirement income		\$ 0.00	\$ 0.00
13. Other monthly income (Specify):		\$ 0.00	\$ 0.00
		\$ 0.00	\$ 0.00
14. SUBTOTAL OF LINES 7 THROUGH 13		\$ 0.00	\$ 0.00
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)		\$ 3,384.21	\$ 0.00
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)		\$ 3,384.21	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:
None.

In re Elliott DeCarlos Tatum
LaShaunta McLamb Tatum

Debtor(s)

Case No. 08-81032

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)		\$	0.00
a. Are real estate taxes included?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Is property insurance included?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
2. Utilities:		\$	160.00
a. Electricity and heating fuel		\$	70.00
b. Water and sewer		\$	27.00
c. Telephone		\$	383.00
d. Other <u>See Detailed Expense Attachment</u>		\$	0.00
3. Home maintenance (repairs and upkeep)		\$	447.00
4. Food		\$	0.00
5. Clothing		\$	0.00
6. Laundry and dry cleaning		\$	0.00
7. Medical and dental expenses		\$	0.00
8. Transportation (not including car payments)		\$	240.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc.		\$	0.00
10. Charitable contributions		\$	0.00
11. Insurance (not deducted from wages or included in home mortgage payments)		\$	0.00
a. Homeowner's or renter's		\$	0.00
b. Life		\$	0.00
c. Health		\$	0.00
d. Auto		\$	85.21
e. Other		\$	0.00
12. Taxes (not deducted from wages or included in home mortgage payments)		\$	
(Specify) <u>Personal Property Taxes</u>		\$	50.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)			
a. Auto		\$	0.00
b. Other		\$	0.00
c. Other		\$	0.00
14. Alimony, maintenance, and support paid to others		\$	0.00
15. Payments for support of additional dependents not living at your home		\$	0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)		\$	0.00
17. Other <u>Chapter 13 Plan Payment</u>		\$	1,922.00
Other		\$	0.00
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)		\$	3,384.21
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:			
<u>None.</u>			
20. STATEMENT OF MONTHLY NET INCOME			
a. Average monthly income from Line 15 of Schedule I		\$	3,384.21
b. Average monthly expenses from Line 18 above		\$	3,384.21
c. Monthly net income (a. minus b.)		\$	0.00

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Detailed Expense Attachment

Other Utility Expenditures:		
Cablevision	\$	134.00
Cellular Phone	\$	189.00
Homeowner's Dues	\$	60.00
Total Other Utility Expenditures	\$	383.00

CH. 13 PLAN - DEBTS SHEET (MIDDLE DISTRICT - STEP PLAN)				Date: 5/4/11			
				Lastname-SS#: Tatum-8588 MTM			
RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN				SURRENDER COLLATERAL			
Retain	Creditor Name	Sch D #	Description of Collateral	Creditor Name	Description of Collateral		
ARREARAGE CLAIMS ON RETAINED COLLATERAL				REJECTED EXECUTORY CONTRACTS/LEASES			
Retain	Creditor Name	Sch D #	Arrearage Amount	Creditor Name	Description of Collateral		
	Wells Fargo Bank		\$6,160				
LTD - DOT on PRINCIPAL RESIDENCE / OTHER REAL PROPERTY							
Retain	Creditor Name	Sch D #	Mortgage Payment	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	Wells Fargo Bank		\$1,285	n/a	n/a	\$1,285	House & Land
				n/a	n/a		
				n/a	n/a		
STD - SECURED DEBTS (Retain Collateral & Pay FMV OF Collateral)							
Retain	Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	U.S Dept. of HUD			7.00			House & Land
				7.00			
				7.00			
STD - SECURED DEBTS & 910 CLAIMS (Pay 100%+)							
Retain	Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	Santander Consumer		\$2,892	5.25	\$29	\$89	02 Nissan
	National Auto Finance		\$8,410	5.25	\$84	\$260	06 Nissan
				7.00			
				7.00			
ATTORNEY FEES (Unpaid Part)							
Law Offices of John T. Orcutt, P.C.		Amount					
		\$600					
SECURED TAXES							
IRS Tax Liens		Secured Amount					
Real Property Taxes on Retained Realty							
UNSECURED PRIORITY DEBTS							
IRS Taxes		Amount					
State Taxes							
Personal Property Taxes							
Alimony or Child Support Arrearage							
COSIGN PROTECT (Pay 100%+)		Int. %	Payoff Amount				
All "Co-Sign Protect Debts (See***)							
GENERAL NON-PRIORITY UNSECURED		Amount to Pay *					
DMI = None(\$0)							
Other Miscellaneous Provisions							
PROPOSED CHAPTER 13 PLAN							
\$ 1922 /month for 29 months, then							
\$ N/A /month for N/A months.**							
Definitions							
Sch D # = The number of the secured debt as listed on Schedule D.							
Adequate Protection = Required monthly 'Adequate Protection' payment.							
* = Minimum of DMI x ACP, minus all co-sign protect debt.							
** = Plan duration is subject to "Duration of Chapter 13 Plan" provision.							
*** Co-sign protect on all debts so designated on filed schedules D, E and F							
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